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# A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to make the State's  
2 property forfeiture process more just by:

3 (1) Increasing transparency and accountability surrounding  
4 property forfeiture;

5 (2) Clarifying which property is subject to forfeiture;

6 (3) Amending the authorized disposition of forfeited  
7 property and the proceeds thereof; and

8 (4) Repealing language that requires the Hawaii Omnibus  
9 Criminal Forfeiture Act to be construed liberally.

10 SECTION 2. Chapter 712A, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 "§712A- Records of forfeited property. (1) Each  
14 seizing agency shall maintain the following records for all  
15 property seized for purposes of forfeiture:

16 (a) The authority under which the property was forfeited;



1        (b) The date on which each item of property was forfeited;

2        (c) The department or agency that has possession of the  
3        forfeited property;

4        (d) A description of each item of forfeited property; and

5        (e) The estimated value of each item of forfeited  
6        property.

7        (2) The seizing agency shall:

8        (a) Maintain all records of forfeited property;

9        (b) Make the records open to inspection; and

10       (c) Post the records on a publicly accessible website."

11       SECTION 3. Section 712A-5, Hawaii Revised Statutes, is  
12       amended to read as follows:

13       "**§712A-5 Property subject to forfeiture; exemption.** (1)

14       The following [~~is~~] shall be subject to forfeiture:

15       (a) Property described in a statute authorizing  
16       forfeiture;

17       (b) Property used or intended for use in the commission  
18       of, attempt to commit, or conspiracy to commit a  
19       covered offense, or [~~which~~] that facilitated or  
20       assisted [~~such~~] the activity;



- 1 (c) Any firearm [~~which~~] that is subject to forfeiture  
2 under any other subsection of this section [~~or which~~  
3 ~~is~~]; carried or visible during [~~7~~, ~~visible~~, ~~7~~] or used in  
4 furtherance of the commission, attempt to commit, or  
5 conspiracy to commit a covered offense [~~7~~]; or [~~any~~  
6 ~~firearm~~] found in proximity to contraband or [~~to~~]  
7 instrumentalities of an offense;
- 8 (d) Contraband or untaxed cigarettes in violation of  
9 chapter 245, shall be seized and summarily forfeited  
10 to the State without regard to the procedures set  
11 forth in this chapter;
- 12 (e) Any proceeds or other property acquired, maintained,  
13 or produced by means of or as a result of the  
14 commission of the covered offense;
- 15 (f) Any property derived from any proceeds [~~which~~] that  
16 were obtained directly or indirectly from the  
17 commission of a covered offense;
- 18 (g) Any interest in, security of, claim against, or  
19 property or contractual right of any kind affording a  
20 source of influence over any enterprise [~~which~~] that  
21 has been established, participated in, operated,



1 controlled, or conducted in order to commit a covered  
2 offense; and

3 (h) All books, records, bank statements, accounting  
4 records, microfilms, tapes, computer data, or other  
5 data [~~which~~] that are used, intended for use, or  
6 [~~which~~] that facilitated or assisted in the commission  
7 of a covered offense, or [~~which~~] that document the use  
8 of the proceeds of a covered offense.

9 (2) Except that:

10 (a) Real property, or an interest therein, may be  
11 forfeited under the provisions of this chapter only in  
12 cases in which the covered offense is chargeable as a  
13 felony offense under state law;

14 (b) No property shall be forfeited under this chapter [~~to~~  
15 ~~the extent of an interest of an owner,~~] by reason of  
16 any act or omission established by [~~that~~] the owner  
17 thereof to have been committed or omitted without the  
18 knowledge [~~and~~] or consent of [~~that~~] the owner;

19 (c) No conveyance used by any person as a common carrier  
20 in the transaction of a business as a common carrier  
21 [~~is~~] shall be subject to forfeiture under this section



1 unless it appears that the owner or other person in  
2 charge of the conveyance is a consenting party or  
3 privy to a violation of this chapter;

4 (d) No conveyance [~~is~~] shall be subject to forfeiture  
5 under this section by reason of any act or omission  
6 established by the owner thereof to have been  
7 committed or omitted without the owner's knowledge or  
8 consent; and

9 (e) A forfeiture of a conveyance encumbered by a bona fide  
10 security interest [~~is~~] shall be subject to the  
11 interest of the secured party if the secured party  
12 neither had knowledge of nor consented to the act or  
13 omission.

14 (3) This chapter shall not apply to the forfeiture of an  
15 animal pursuant to section 711-1109.2.

16 (4) This section shall not prohibit or restrict  
17 forfeitures authorized by law other than this chapter."

18 SECTION 4. Section 712A-16, Hawaii Revised Statutes, is  
19 amended to read as follows:



1           "§712A-16   Disposition of property forfeited.   (1)   All  
2 property forfeited to the State under this chapter shall be  
3 transferred to the attorney general, who[+] may:

4           ~~[(a) May transfer property, other than currency, which~~  
5                   ~~shall be distributed in accordance with subsection (2)~~  
6                   ~~to any local or state government entity, municipality,~~  
7                   ~~or law enforcement agency within the State;~~

8           ~~(b) May sell]~~   (a)   Sell forfeited property to the public  
9                   by public sale; provided that for leasehold real  
10                  property:

11           (i)   The attorney general shall first offer the holder  
12                  of the immediate reversionary interest the right  
13                  to acquire the leasehold interest and any  
14                  improvements built or paid for by the lessee for  
15                  the then fair market value of the leasehold  
16                  interest and improvements.   The holder of the  
17                  immediate reversionary interest shall have thirty  
18                  days after receiving written notice within which  
19                  to accept or reject the offer in writing;  
20                  provided that the offer shall be deemed to be  
21                  rejected if the holder of the immediate



1           reversionary interest has not communicated  
2           acceptance to the attorney general within the  
3           thirty-day period. The holder of the immediate  
4           reversionary interest shall have thirty days  
5           after acceptance to tender to the attorney  
6           general the purchase price for the leasehold  
7           interest and any improvements, upon which tender  
8           the leasehold interest and improvements shall be  
9           conveyed to the holder of the immediate  
10          reversionary interest[-];

11          (ii) If the holder of the immediate reversionary  
12          interest fails to exercise the right of first  
13          refusal provided in subparagraph (i), the  
14          attorney general may proceed to sell the  
15          leasehold interest and any improvements by public  
16          sale[-]; and

17          (iii) Any dispute between the attorney general and the  
18          holder of the immediate reversionary interest as  
19          to the fair market value of the leasehold  
20          interest and improvements shall be settled by  
21          arbitration pursuant to chapter 658A;



1       ~~[-(e) May sell]~~ (b) Sell or destroy all raw materials,  
2                   products, and equipment of any kind used or intended  
3                   for use in manufacturing, compounding, or processing a  
4                   controlled substance or any untaxed cigarettes in  
5                   violation of chapter 245;

6       ~~[-(d) May compromise]~~ (c) Compromise and pay valid claims  
7                   against property forfeited pursuant to this chapter;  
8                   or

9       ~~[-(e) May make]~~ (d) Make any other disposition of forfeited  
10                   property authorized by law.

11       (2) All forfeited property and the sale proceeds thereof~~[-~~  
12 ~~up to a maximum of three million dollars per year, not~~  
13 ~~previously transferred pursuant to [subsection] (1)(a) of this~~  
14 ~~section]~~ shall, after payment of expenses of administration and  
15 sale, be distributed or retained as follows:

16       (a) One quarter shall be distributed to the unit or units  
17                   of state or local government law enforcement  
18                   ~~[+]~~whose~~[+]~~ officers or employees conducted the  
19                   investigation and caused the arrest of the person  
20                   whose property was forfeited or seizure of the  
21                   property for forfeiture;





1 (b) One quarter shall be distributed to the prosecuting  
2 attorney who instituted the action producing the  
3 forfeiture; and

4 (c) One half shall be [~~deposited into~~] retained in the  
5 criminal forfeiture fund established by this chapter.

6 (3) [~~Property~~] All property and money distributed to units  
7 of state [~~and~~] or local government pursuant to subsection (2) (a)  
8 and (b) shall be used for law enforcement purposes, including  
9 but not limited to drug recognition expert training and public  
10 awareness or outreach efforts, and shall complement but not  
11 supplant the funds regularly appropriated for [~~such~~] these  
12 purposes.

13 (4) There [~~is~~] shall be established in the department of  
14 the attorney general a special fund to be known as the criminal  
15 forfeiture fund[~~, hereinafter referred to as the "fund" in~~] into  
16 which shall be deposited [~~one-half of~~] the proceeds of a  
17 forfeiture and any penalties paid pursuant to section 712A-  
18 10(6). All moneys in the criminal forfeiture fund except for  
19 those disbursements provided for in subsection (2) (a) and (b)  
20 shall be expended by the attorney general and are hereby  
21 appropriated for the following purposes:



- 1 (a) The payment of any expenses necessary to seize,  
2 detain, appraise, inventory, safeguard, maintain,  
3 advertise, or sell property seized, detained, or  
4 forfeited pursuant to this chapter or of any other  
5 necessary expenses incident to the seizure, detention,  
6 or forfeiture of ~~[such]~~ property and ~~[such]~~ contract  
7 services and payments to reimburse any federal, state,  
8 or county agency for any expenditures made to perform  
9 the foregoing functions;
- 10 ~~[(b)] The payment of awards for information or assistance~~  
11 ~~leading to a civil or criminal proceeding;~~
- 12 ~~[(c)] The payment of supplemental sums to state and county~~  
13 ~~agencies for law enforcement purposes;~~
- 14 ~~[(d)]~~ (b) The payment of expenses arising in connection  
15 with programs for training and education of law  
16 enforcement officers; and
- 17 ~~[(e)]~~ (c) The payment of expenses arising in  
18 connection with enforcement pursuant to the drug  
19 nuisance abatement unit in the department of the  
20 attorney general.



1 All unencumbered and unexpended moneys in excess of \$1,000,000  
2 remaining on balance in the criminal forfeiture fund at the  
3 close of June 30 of each year shall be deposited to the credit  
4 of the state general fund.

5 (5) The attorney general may, without regard to the  
6 requirements of chapter 91, promulgate rules [~~and regulations~~]  
7 necessary to carry out the purpose of this chapter, including  
8 rules concerning the disposition of property, the use of the  
9 criminal forfeiture fund, and compromising and paying valid  
10 claims against property forfeited [~~pursuant to this chapter~~].

11 (6) [~~Not~~] No less than twenty days [~~prior to~~] before the  
12 convening of each regular session, the attorney general shall  
13 provide to the legislature a report on the use of the Hawaii  
14 omnibus criminal forfeiture act during the fiscal year preceding  
15 the legislative session. The report shall include:

16 (a) The total amount and type of property seized by law  
17 enforcement agencies;

18 (b) The total number of administrative and judicial  
19 actions filed by prosecuting attorneys and the  
20 disposition thereof[~~7~~] for each action;



1 (c) The total number of claims or petitions for remission  
2 or mitigation filed in administrative actions and the  
3 dispositions thereof[+] for each action;

4 (d) The total amount and type of property forfeited and  
5 the sale proceeds thereof;

6 (e) The total amount and type of property distributed to  
7 units of state and local government;

8 (f) The amount of money deposited into the criminal  
9 forfeiture fund; [~~and~~]

10 (g) The amount of money deposited into the general fund;  
11 and

12 [~~(g)~~] (h) The amount of money expended by the attorney  
13 general from the criminal forfeiture fund under  
14 subsection (5) and the reason for the expenditures."

15 SECTION 5. Section 712A-19, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "[+]§712A-19[+] **Construction.** It is the intent of the  
18 legislature that this chapter be [~~liberally~~] construed so as to  
19 effect the purposes of this chapter."



# H.B. NO. 126

1 SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7

INTRODUCED BY:

*Dan Carnas*

JAN 14 2025



# H.B. NO. 126

**Report Title:**

Hawaii Omnibus Criminal Forfeiture Act

**Description:**

Increases transparency and accountability surrounding property forfeiture. Clarifies which property is subject to forfeiture. Amends the authorized disposition of forfeited property and the proceeds thereof. Repeals language that requires the Hawaii Omnibus Criminal Forfeiture Act to be construed liberally.

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